

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

RIGOBERTO AVILA, JR.,

Petitioner,

v.

**LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,**

Respondent.

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Case No. 3:04-CV-419-FM

UNOPPOSED MOTION TO WITHDRAW AND SUBSTITUTE COUNSEL

Petitioner, Rigoberto Avila, Jr., by and through undersigned counsel Cathryn Crawford, moves this Court pursuant to 18 U.S.C. § 3599(e) to allow her to withdraw and to appoint in her place the Federal Public Defender for the Northern District of Texas, Capital Habeas Unit (hereinafter “FPD”), as co-counsel in this matter. Undersigned counsel Robert C. Owen, who was previously appointed by this Court, will remain as co-counsel. Respondent does not oppose the relief requested in this motion. Mr. Avila shows the following as good cause:

1. Mr. Avila was convicted of capital murder and sentenced to death on May 7, 2001, in the 41st District Court of El Paso County, Texas. Since then, he has pursued relief from his conviction and sentence in both state and federal court. Most recently, the Texas Court of Criminal Appeals (“CCA”) issued an order on March 11 denying Mr. Avila post-conviction relief on claims related to newly-available scientific evidence and false testimony by State witnesses. The CCA rejected a recommendation from the state district court that Mr. Avila receive a new trial.

2. Death-sentenced federal habeas petitioners are entitled to the appointment of counsel in federal court. *McFarland v. Scott*, 512 U.S. 849, 857–58 (1994). Title 18 U.S.C. § 3599(a)(2) provides that a person pursuing postconviction relief from a death sentence imposed by a state court “shall be entitled to the appointment of one or more attorneys,” and other resources. *See Martel v. Clair*, 565 U.S. 648, 659–60 (2012). Section 3599(e) provides both that counsel appointed after judgment are obligated to continue that appointment through “all available post-conviction process,” including applications for stays of execution, competency proceedings, and clemency motions, *Wilkins v. Davis*, 832 F.3d 547, 557–58 (5th Cir. 2016), and “that an attorney appointed under [the statute] may be ‘replaced by similarly qualified counsel upon the attorney’s own motion or upon motion of the defendant.’” *Clair*, 565 U.S. at 657 (quoting 18 U.S.C. § 3599(e)).
3. Appointing two lawyers to represent death-sentenced individuals is consistent with the Guide to Judiciary Policy, which states that “[d]ue to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two attorneys.” Guide to Judiciary Policy, Guidelines for Administering the CJA and Related Statutes, Vol. 7A, § 620.10.20
4. Currently, Cathryn Crawford and Robert C. Owen are appointed to represent Mr. Avila pursuant to 18 U.S.C. § 3599. Doc. 46; Doc. 58.
5. Substitution is in the interests of justice because undersigned counsel Cathryn Crawford, Mr. Avila’s longtime lead attorney, has taken a full-time job practicing law in Chicago, Illinois, and that work precludes her from effectively representing Mr. Avila pursuant to 18 U.S.C. § 3599. Her new position precludes her from devoting the time necessary to represent Mr. Avila.

6. Undersigned counsel has identified replacement counsel. She has conferred with the FPD and they are willing and able to be appointed as co-counsel to represent Mr. Avila. Specifically, Jeremy Schepers, the Supervisor of the Capital Habeas Unit (CHU), has informed undersigned counsel of their availability to serve as co-counsel in this case. That unit consists of attorneys who specialize in capital habeas corpus and post-conviction litigation. It was created to assist inmates, such as Mr. Avila, in seeking federal habeas corpus relief from their conviction and death sentence.
7. When the United States Court of Appeals for the Fifth Circuit approved the establishment of the two Texas CHUs, it intended that the units take out-of-district cases, and they are authorized to represent petitioners in any federal district in Texas. Consistent with its mandate, the FPD currently represents seventeen capital clients throughout Texas—ten in the Southern District, three in the Northern District, three in the Eastern District, and one in this District.¹
8. Moreover, because the FPD is independently funded, it will not seek any funding, reimbursement, or expenses from this Court in representing Mr. Avila. Similarly, this motion will obviate any need for expert or investigative funding from this Court. Appointing the FPD as substitute counsel for undersigned counsel Cathryn Crawford would serve the interests of justice by ensuring that Mr. Avila receives the representation that he is entitled to under 18 U.S.C. § 3599.
9. The contact information for the FPD is:

Jason D. Hawkins
Federal Public Defender
Northern District of Texas
525 Griffin Street, Suite 629
Dallas, Texas 75202

¹ The FPD is appointed to represent Ramiro Gonzales in this district as co-counsel. Order Appointing Counsel (Doc. 50), *Gonzales v. Davis*, No. 5:10-cv-00164 (June 1, 2018).

214.767.2746
214.767.2886 fax
Jason_Hawkins@fd.org

And:

Jeremy Schepers
Supervisor, Capital Habeas Unit
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525 Griffin Street, Suite 629
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Jeremy_Schepers@fd.org

10. Substitution of the FPD as co-counsel will not prejudice Mr. Avila in any way, particularly as Mr. Owen will remain as co-counsel in this matter.
11. Upon appointment, the FPD will assign an attorney from that office to enter an appearance on Mr. Avila's behalf. The FPD will ensure that Mr. Avila receives the representation to which 18 U.S.C. § 3599 entitles him. The FPD will represent Mr. Avila:

throughout every subsequent stage of available judicial proceedings, including . . . applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and . . . such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

18 U.S.C. § 3599(e). The FPD, in conjunction with Mr. Owen, will represent Mr. Avila in pursuing remedies available to him resulting from the recent CCA denial, and any other possible avenues that may exist, consistent with the mandates of 18 U.S.C. § 3599.
12. Mr. Avila has been consulted concerning this motion. He has no objection to the Court's allowing Ms. Crawford to withdraw and joins in the request that the Capital Habeas Unit be appointed in her place.
13. Respondent does not oppose the relief requested in this motion.

For these reasons, Mr. Avila respectfully requests that this Court grant undersigned counsel Cathryn Crawford leave to withdraw, and that it appoint the Federal Public Defender for the Northern District of Texas, Capital Habeas Unit, as co-counsel, alongside current counsel, Robert C. Owen.

DATED: May 26, 2020

Respectfully submitted,

s/ Cathryn S. Crawford
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CERTIFICATE OF CONFERENCE

I certify that on May 22, 2020, I contacted counsel for Respondent, Garrett Greene, Esq., regarding Respondent's position on this motion. Mr. Greene stated that Respondent does not oppose the relief requested.

s/ Robert C. Owen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the Attorney General for the State of Texas, Counsel for Respondent, on May 26, 2020, via ECF filing with notice to:

Garrett Green, Esq.
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Garrett.Green@oag.texas.gov

s/ Robert C. Owen